

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company (U904G) for Authority to increase its Gas Revenue Requirements to Reflect its Accomplishments for Demand-Side Management Program Years 1995 and 1997, Energy Efficiency Program Year 1999, and Low-Income Program Years 1998 and 1999 in the 2000 Annual Earnings Assessment Proceeding (“AEAP”).

Application 00-05-002

And Related Matters.

Application 00-05-003
Application 00-05-004
Application 00-05-005
Application 01-05-003
Application 01-05-009
Application 01-05-017
Application 01-05-018
Application 02-05-002
Application 02-05-003
Application 02-05-005
Application 02-05-007

**ADMINISTRATIVE LAW JUDGE’S RULING
ADDRESSING ELIGIBILITY FOR COMPENSATION AWARD**

Pursuant to Pub. Util. Code §§ 1801-1812, The Utility Reform Network (TURN) filed a Notice of Intent (NOI) to claim compensation for its participation in this proceeding. This ruling finds that TURN is eligible to file its claim for compensation.

Timeliness

Pub. Util. Code § 1804(a)(1) says in relevant part that “A customer who intends to seek an award...shall, within 30 days after the prehearing conference is held, file and serve...a notice of intent to claim compensation.”

The prehearing conference in this proceeding was held on February 27, 2003. TURN filed its NOI on April 1, 2003, which is the 30-day deadline due to the intervening weekend and Monday holiday. We find that TURN has timely filed its NOI.

Qualification as Customers

Administrative Law Judge’s (ALJ) rulings issued pursuant to Pub. Util. Code § 1804(b)(1) or § 1804(b)(2) must rule both on whether the intervenor qualifies as a customer and which of the three statutory categories applies. (Decision (D.) 98-04-059, mimeo., p. 31.) Section 1802(b) provides in relevant part that:

“Customer means any participant representing consumers, customers, or subscribers of any electrical, gas, telephone, telegraph, or water corporation that is subject to the jurisdiction of the commission; any representative who has been authorized by a customer; or any representative of a group or organization authorized pursuant to its articles of incorporation or bylaws to represents the interests of residential ratepayers...”

As summarized by the Commission in D.98-04-059, Category 1 is an actual customer who represents more than his or her own narrow self-interest; or a self-appointed representative of at least some other consumers, customers or subscribers of the utility. A Category 2 customer is one who has been authorized by actual customers to represent them. A Category 3 customer is a formally organized group authorized by its articles of incorporation or bylaws to represent the interests of residential customers.

A party seeking eligibility to claim compensation is required to state how it meets the definition of a customer and, for Category 3 customers, point out where in the organization's articles or bylaws it is authorized to represent the interests of residential ratepayers. If current articles or bylaws have already been filed, the group or organization need only make a specific reference to such filing. Groups should indicate in the NOI the percentage of their membership that are residential ratepayers. Similarly, a Category 2 customer is required to identify the residential customer or customers that authorized him or her to represent that customer. (D.98-04-059, mimeo., pp. 29-30, 83, 88.)

TURN is a non-profit consumer advocacy organization with a long history of representing the interests of residential and small commercial customers before this Commission. TURN's articles of incorporation specifically authorize its representation of residential customers, and TURN states that the vast majority of its 30,000 members are such ratepayers.¹ Accordingly, we find that TURN qualifies as a Category 3 customer.

Planned Participation

Pub. Util. Code § 1804(a)(2)(A)(I) requires that the NOI include a statement of the nature and extent of the customer's planned participation. The

¹ We require groups such as TURN to include in their NOIs a copy of the authorization in their articles of incorporation to represent residential customers, or to provide a reference to a previous filing. (See D.98-04-059, mimeo., p. 30.) TURN provided the relevant portion of its articles of incorporation in the NOI submitted in Application (A.) 98-02-017, and again in A.99-12-024. TURN attests to the fact that its articles of incorporation have not changed since the time of those earlier submissions. See TURN NOI, footnote 2.

Commission has stated that the information provided on planned participation should provide the basis for a more critical preliminary assessment of whether (1) an intervener will represent customer interests that would otherwise be underrepresented, (2) the participation of third-party customers is non-duplicative, and (3) that participation is necessary for a fair determination of the proceeding. The ALJ may issue a preliminary ruling on these issues, based on the information contained in the NOI and in the Assigned Commissioner's scoping memo. (D.98-04-059, pp. 27-28, 31-33.)

TURN states that it is interested in verifying the shareholder earnings claim calculations associated with milestones for program years 2000 and 2001. At the same time, TURN indicates that it cannot at this time commit to a specific level of participation "due to resource constraints and uncertainties regarding evaluation by other parties."² To the extent that these same verification issues are addressed by other parties, or are represented by other parties which do not seek intervener compensation (e.g., the Office of Ratepayer Advocates), TURN runs the risk that their efforts may merely duplicate those of others. To the extent that such duplication is found, TURN is at risk of receiving reduced or no compensation for such efforts. The NOI does not provide us with sufficient information to make such a determination at this time. The Commission will consider the issue of duplication of effort when it reviews the subsequent request for compensation.

The Commission has also explained that participation by interveners is not necessary for a fair determination of the proceeding if the customer argues issues

² TURN NOI, pp. 2-3.

that are irrelevant, beyond the scope of the proceeding or beyond the Commission's jurisdiction. (*Ibid.*, pp. 31-32.)

Here, I preliminarily find that the planned participation of TURN, as described in its NOI, is necessary for a fair determination of the proceeding. The issues that TURN intends to address have been identified in the March 19, 2003 ALJ's ruling in this proceeding.

Estimated Compensation Request

TURN presents the following estimate of compensation costs, assuming that it can actively participate in the verification of earnings claims:

Fees of Marcel Hawiger, Attorney (160 hours at \$220/hour)	\$35,200
Fees of Daniel Edington (80 hours at \$175/hour)	\$14,000
Consultant Expenses	\$25,000
Other Direct Expenses	\$5,000
TOTAL	<u>\$79,200</u>

The NOI fulfills the requirements of Pub. Util. Code § 1804(a)(2)(A)(ii) by including an itemized estimate of the compensation expected to be requested. Although this ruling does not address the merits of the final compensation claim by TURN, I reiterate and clarify my cautionary observations in a ruling dated October 12, 1999 in A.99-07-002 et al. that interveners should carefully review Commission orders and be mindful of the areas where the Commission reduced either the hourly rates or number of hours claimed.

Significant Hardship

Pub. Util. Code § 1803 authorizes the Commission to award reasonable advocate's and expert witness fees and related costs only to customers who make a substantial contribution to the Commission's decision and for whom participation or intervention in a proceeding without an award of fees imposes a significant financial hardship. The Commission has clarified that the financial hardship test varies by type of customer. (See D.98-04-059, mimeo., pp. 33-37, 89.)

In summary, Category 1 and, in part, Category 2 customers must show by providing their own financial information (which may be filed under seal) that they cannot afford, without undue hardship, to pay the cost of participation. Category 3 customers must show that the economic interest of individual members is small in comparison to the cost of participation. For Category 2 customers where representation is authorized to represent a group of customers, the comparison test will not be routinely applied. The question of which test to apply will be determined from the form of customer asserted and customer's specific financial hardship showing.

Pub. Util. Code § 1804 (a)(2)(B) allows the customer to include with the NOI a showing that participation in the hearing or proceeding would pose a significant financial hardship. Alternatively, such a showing shall be included with the request for compensation submitted pursuant to § 1804(c). If a customer has received a finding of significant financial hardship in any proceeding, § 1804(b)(1) creates a rebuttable presumption that the customer is eligible for compensation in other proceedings which commence within one year of the date of the finding.

The Commission found that TURN satisfies the requirement for significant financial hardship in the December 19, 2001 Ruling issued in A.01-09-003. This proceeding commenced within one year of the date of that finding. Therefore, I find that TURN has met the required showing of “significant financial hardship” for the purposes of its NOI in this proceeding.

Today’s ruling goes only to the eligibility of TURN to claim compensation. It does not address the final merits of the claims, which the Commission will address after parties have documented expenses in greater detail and demonstrated substantial contribution to the proceeding, as provided in Pub. Util. Code Article 5.

IT IS RULED that:

1. The Utility Reform Network (TURN) timely filed a Notice of Intent for compensation in this proceeding.
2. TURN is a Category 3 customer.
3. TURN has fulfilled the requirements of Pub. Util. Code § 1804(a)(2)(A).
4. TURN has demonstrated “significant financial hardship.”
5. TURN is eligible for an award of compensation.

Dated July 7, 2003, at San Francisco, California.

/s/ MEG GOTTSTEIN

Meg Gottstein
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Addressing Eligibility for Compensation Award on all parties of record in this proceeding or their attorneys of record.

Dated July 7, 2003, at San Francisco, California.

/s/ ELIZABETH LEWIS

Elizabeth Lewis

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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